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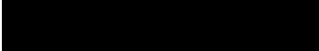
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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

FILE:  Office: Shannon, Ireland

Date: **MAY 28 2003**

IN RE: Applicant: 

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

ON BEHALF OF APPLICANT:

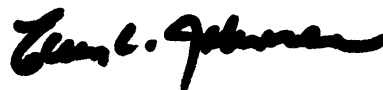
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.



Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal was denied by the Director, Shannon, Ireland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Ireland. On April 30, 2001, the applicant was removed from the United States pursuant to sections 212(a)(2)(A)(i)(I), 212(a)(6)(C)(i), 217, and 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(2)(A)(i)(I), 1182(a)(6)(i), 1187 and 1182(a)(9)(A)(ii), for having committed a crime involving moral turpitude, for procuring admission into the United States (U.S.) by fraud or willful misrepresentation, for violating the terms of the visa waiver program, and for having been ordered removed from the U.S. less than 10 years ago. The applicant seeks permission to reapply for admission into the United States after deportation or removal (I-212 application) in order to reside with his wife in the U.S.

The director found that, based on the evidence in the record, the applicant is inadmissible to the United States. The director concluded that the applicant had failed to establish extreme hardship to his U.S. citizen wife and that he failed to establish that his case merited a favorable exercise of discretion by the Attorney General. The application was denied accordingly.

Section 212(a)(9)(A)(ii) of the Act provides that aliens who have been ordered removed under section 240 of the Act, 8 U.S.C. § 1129a, or any other provision of the law are inadmissible for 10 years. Under certain circumstances, an application for permission to reapply for admission to the United States may be approved in the discretion of the Attorney General, prior to the passage of 10 years.

In determining whether the consent required by statute [for an application for permission to reapply for admission] should be granted [by the Attorney General], all pertinent circumstances relating to the applicant which are set forth in the record of proceedings are considered. These include but are not limited to the basis for deportation, recency of deportation, length of residence in the United States, the moral character of the applicant, his respect for law and order, evidence of reformation and rehabilitation, his family responsibilities, any inadmissibility to the United States under other sections of law, hardship involved to himself and others, and the need for his services in the United States.

Matter of Tin, 14 I&N Dec. 373, 374 (Comm. 1973).

An I-212 application approval requires that the favorable aspects of the applicant's case outweigh the unfavorable aspects. In making this determination, it is appropriate for the Attorney General to examine the basis of a removal as well as an applicant's general compliance with immigration and other laws. Evidence of serious disregard for the law is viewed as an adverse factor. See *Matter of Lee*, 17 I&N Dec. 275 (Comm. 1978).

The Immigration and Naturalization Service ("INS", now known as the Bureau of Citizenship and Immigration Services ("BCIS")) Operational Instructions (O.I.) at section 212.7, specify that when an alien requires both permission to reapply for admission and a waiver of grounds of inadmissibility, the I-212 application must be adjudicated first. If the I-212 application is denied, then the waiver of grounds of inadmissibility application (I-601 application) should be rejected, and the fee refunded.

The record indicates that the director did not adjudicate the applicant's I-212 application first and that instead, the director adjudicated and denied the applicant's I-601 application for a waiver of grounds of inadmissibility. Because the information and analysis used in the director's denial of the applicant's I-601 application are equally applicable to the adjudication of the applicant's I-212 application, this office finds the error to be harmless.¹

The favorable factors in this case include the applicant's marriage to a U.S. citizen, an approved I-130 petition for alien relative, and the existence of community and family ties in the U.S.

The unfavorable factors include the applicant's failure to abide by the conditions of his admission into the U.S. and his lengthy unlawful presence in the country, his recent procurement of admission into the U.S. by fraud, and his criminal record in Ireland.

The record indicates that in 1985, the applicant was convicted in the District Court of Cork City, Ireland, of assault and battery in violation of the Offences Against the Person Act, 1861, sections 42 and 47 ("Offences Act"). The applicant was sentenced to 12 months imprisonment.

Section 212(a)(2)(A) of the Act states in pertinent part:

(2) Criminal and related grounds. -

(A) Conviction of certain crimes. -

¹ It appears from the record that an I-601 application fee of \$110.00 was paid to the INS in London. Because the I-212 application should have been adjudicated first, and because based on the facts and analysis in the record, the I-212 application would have been denied, the applicant's I-601 application should be rejected and his filing fee returned to him.

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of . . . a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

A crime involves moral turpitude where knowing or intentional conduct is an element of the offense. *Matter of Perez-Contreras*, 20 I&N Dec. 615, 618 (BIA 1992).

Section 47 of the Offences Act states, in pertinent part:

S. 47 - Assault occasioning actual bodily harm -

[A]ctual bodily harm includes any hurt or injury calculated to interfere with the health or comfort of the victim (emphasis added).

The definition in section 47 satisfies the knowing or intentional conduct element of a crime involving moral turpitude.

Section 212(a)(6)(C) states in pertinent part:

(C) Misrepresentation.-

(i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

In 1998, the applicant procured a fraudulent Irish passport with his picture and issued in someone else's name in order to gain admission into the United States. The evidence in the record indicates that the applicant committed this act knowingly, and that he intentionally misrepresented himself so that the INS would not realize he had resided and worked unlawfully in the U.S. for 12 years.

In support of the applicant's I-212 application, counsel submitted affidavits from the applicant, his wife and friends, and his employers. The affidavits discuss the applicant's good moral character and his close relationship to his wife (Mrs. [REDACTED] Mrs. [REDACTED] affidavit additionally states that she will suffer emotional and financial hardship if her husband's application is not granted. She states that her parents have both died in the last few years and that her sister is ill. Mrs. [REDACTED] asserts that she needs her husband to give her emotional

support and to comfort her. Although Mrs. [REDACTED] does not state whether she would move to Ireland if her husband were unable to return to the U.S., counsel indicates that Mrs. [REDACTED] has worked for Verizon for more than 23 years and that leaving her job and moving to Ireland would cause her to lose her seniority and retirement benefits.

Based on the evidence in the record, the favorable factors in this case do not outweigh the unfavorable factors. The applicant and his wife were married for only four months prior to the applicant's removal from the U.S. They have no children or other family ties together. Moreover, the evidence fails to establish that Mrs. [REDACTED] is emotionally or financially reliant on the applicant. Although the evidence submitted indicates that the applicant has made friends in the U.S., it does not indicate that his friends are reliant on him or that they would suffer hardship if the applicant's I-212 application were not granted. In addition, although the record indicates that the applicant has three siblings in the U.S., no evidence about their relationship or the affect of a separation was submitted.

On the other hand, the evidence in the record clearly reflects the applicant's willful disregard for the laws of the United States. The applicant violated the terms of his visa waiver program admission into the U.S. when he resided and worked illegally in the U.S. for 15 years. Moreover, the applicant's disregard for the laws of the U.S. was further compounded by his willful and knowing use of a fraudulent passport to procure admission into the U.S. in 1998. Further proof of the applicant's disregard for the law is seen in his 1985 Irish conviction for assault and battery, a crime involving moral turpitude for which he was sentenced to 12 months imprisonment.

Section 291 of the Act, 8 U.S.C. 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has not established that a favorable exercise of the Attorney General's discretion is warranted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The applicant's I-601 application should be rejected and his filing fee returned to him.